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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 14, 2016

10:14 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

1 Borrower Claims Trust's General Status Conference.

2

3 Status Conference Regarding Claim(s) of Alan Moss.

4 Telephonic pre-trial conference regarding claims of Rhonda  
5 Gosselin.

6

7 Doc# 10093 ResCap Borrower Claims Trust's Motion In Limine to  
8 Exclude Testimony of Rhonda Gosselin. (related document(s)9959)

9

10 (CC: Doc. no. 9971) ResCap Borrower Claims Trust's Ninety-  
11 Fourth Omnibus Objection to Claims ((I) No Liability Borrower  
12 Claims, (II) Redesignate, Reclassify, Reduce and Allow Borrower  
13 Claim, (III) Reclassify, Reduce and Allow Borrower Claim, and  
14 (IV) Redesignate and Allow Borrower Claim).

15

16 (CC: Doc# 10047) ResCap Liquidating Trust's Second Omnibus  
17 Motion to Enforce Injunctive Provisions of Plan and  
18 Confirmation Order.

19

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RESIDENTIAL CAPITAL, LLC, ET AL.

5

1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: All right, please be seated. We're here  
4 in Residential Capital, 12-12020. Mr. Wishnew?

5 MR. WISHNEW: Good morning, Your Honor. Jordan  
6 Wishnew, Morrison & Foerster for the ResCap Borrower Claims  
7 Trust. Your Honor, we begin today's agenda on page 4, item  
8 number 3 under the heading "Status Conference".

9 THE COURT: Yes.

10 MR. WISHNEW: This is the Borrower Claims Trust's  
11 request for a status conference concerning the amended claim  
12 4445 filed by Alan Moss.

13 THE COURT: Yes.

14 MR. WISHNEW: I believe Mr. Moss is on the phone.

15 THE COURT: Mr. Moss, are you on the phone?

16 MR. MOSS: I am.

17 THE COURT: Thank you very much.

18 Go ahead, Mr. Wishnew.

19 MR. WISHNEW: Thank you, Your Honor. Your Honor, this  
20 matter -- you had previously -- the Court had previously  
21 decided the matter. It was taken up on appeal by Mr. Moss.  
22 The Judge Lorna Schofield of the Southern District issued an  
23 opinion reversing in part Your Honor, and so the matter is now  
24 back before the Court.

25 The issue on which Your Honor decided was that there

1 was a qualified privilege that essentially precluded all the  
2 tort claims Mr. Moss was asserting against the debtors. There  
3 was a question about whether there was reckless disregard of  
4 Moss' rights, and so whether actual malice existed. And so  
5 there were concerns by the district court about the facts in  
6 the record, raising questions whether ETS acted in reckless  
7 disregard of Mr. Moss' rights. So that contested issue is back  
8 before the Court.

9 In addition, the underlying tort claims that existed  
10 in the original objection, which include: negligence,  
11 negligence per se, fraud, and intentional infliction of  
12 emotional distress, those -- or the Trust's objection to those  
13 specific claims at this point is undetermined.

14 So I defer to the Court in terms of how it wishes to  
15 proceed, but one suggestion would be to issue a decision on the  
16 individual claims so as to narrow the contested issues that  
17 would require further discovery by the parties, because  
18 obviously Mr. Moss bears the burden to prove reckless  
19 disregard, since the Trust will continue to assert the  
20 qualified privilege defense, even after further discovery. And  
21 if there are less than all of the remaining claims going  
22 forward, then there could be additional discovery required in  
23 that regard.

24 So that's at least the Trust's suggestion as to how  
25 the matter would proceed, but I'm not sure if Mr. Moss has

1 additional suggestions or the Court has any thoughts.

2 THE COURT: Have you talked with Mr. Moss about --

3 MR. WISHNEW: No, we've not, Your Honor.

4 THE COURT: All right. Mr. Moss, what do you have to  
5 say.

6 MR. MOSS: I also would defer to the Court in how it  
7 wishes to proceed here. I don't agree with some of what Mr.  
8 Wishnew just said, including the burden that I may or may not  
9 have here. I think the district court made clear that the  
10 Trust has the burden. And other than that, I defer to the  
11 Court on how it wishes to proceed.

12 THE COURT: Let me ask you this, Mr. Moss. What  
13 discovery do you wish to undertake?

14 MR. MOSS: Well, what I want -- the deficiency that I  
15 see, although it was cast before -- by me as discovery, I think  
16 really is I misnamed it, I think. Because the only documents  
17 in the record are from ResCap. My claim is against Executive  
18 Trustee Services, and they have not chosen to include any  
19 documentation at all from Executive Trustee Services. So I  
20 believe that the record at least should be amended first, and  
21 then I would be --

22 THE COURT: I'm sorry, say that again, please?

23 MR. MOSS: I'm sorry, I did not understand.

24 THE COURT: I did understand what you said, so I'm  
25 asking you to repeat that. I didn't understand what it is that

1 you suggested that we do.

2 MR. MOSS: Oh, I'm sorry. What I'm suggesting is that  
3 the record that was compiled as to my claim only has  
4 documentation from ResCap. And there's nothing in the record  
5 from Executive Trustee Services against whom my claim is  
6 directed. And I think that it would be proper to order the  
7 Trust to submit for the record any records that they may have  
8 in their possession from ETS.

9 THE COURT: Let me ask you this. Am I correct that  
10 you're an attorney, Mr. Moss?

11 MR. MOSS: I am.

12 THE COURT: Okay. Here's what I'd like to do, Mr.  
13 Wishnew. I want to enter a -- I'm not going to decide those  
14 other issues now, in part because I have three or four trials  
15 between now and the middle of November, and I just don't -- the  
16 Court just doesn't have the time to go back and deal with those  
17 underlying claims.

18 So I'm going to order, submit -- talk to Mr. Moss, but  
19 submit a proposed case management and scheduling order setting  
20 ninety days for fact discovery, forty-five days for expert  
21 discovery. Get a date from my courtroom deputy, Deanna  
22 Anderson for the next case management conference. Try and pick  
23 an omnibus date if there is one, near the end of the fact  
24 discovery period.

25 Mr. Moss can appear by telephone at the conference.



1 And let's see where -- I mean, Mr. Moss will do whatever  
2 discovery he thinks he has to do, and likewise the Trust can do  
3 whatever discovery it has to do. It's a fairly limited --  
4 ninety days is a fairly limited time period. But it seemed,  
5 based on my knowledge of what the underlying basis of the  
6 claims are, I think that's a sufficient time period.

7 So Mr. Moss, Mr. Wishnew will prepare -- I have a  
8 template that I use for case management and scheduling orders.  
9 It is on the court's public website under my chamber rules, so  
10 you can see what it looks like. And while this is a contested  
11 matter and not an adversary proceeding, I use that same  
12 template when scheduling discovery of contested matters.

13 One of the -- Mr. Moss, one of the provisions in the  
14 case management and scheduling order is a requirement that the  
15 parties confer about ADR or mediation. It typically requires a  
16 face-to-face meeting, but since you're in California, not here,  
17 Mr. Wishnew, change that to "by telephone". All right?

18 So you're going to need to confer with Mr. Wishnew as  
19 to whether you could possibly reach a settlement or whether  
20 you're proposing mediation. I don't compel you to do -- I  
21 order that you have the discussion, but I don't order that  
22 mediation or other ADR be followed. But I do require that that  
23 occur within fourteen days after the entry of a case management  
24 and scheduling order. But since you're in California, I'll  
25 permit that communication to be by telephone rather than face-

1 to-face as I would ordinarily require.

2 Mr. Wishnew, you also ought to talk with Mr. Moss as  
3 to whether -- I mean, Mr. Moss, with respect to discovery, I  
4 encourage the parties to try and agree on discovery voluntarily  
5 as opposed to actually having to serve a request for production  
6 of documents. So that's obviously your option what to do. But  
7 if you want ETS documents, talk to Mr. Wishnew about it and  
8 hopefully there won't be a problem about it; they will  
9 voluntarily -- you'll describe for them what you want with a  
10 letter to Mr. Wishnew, and if the documents exist he'll  
11 endeavor to produce it.

12 So with a ninety-day fact discovery period, it's a  
13 fairly limited period of time, but you should be able to move  
14 forward pretty quickly. If there are -- you'll see in the case  
15 management order, Mr. Moss, that if there are discovery  
16 disputes -- and I must say in the ResCap matters, that that's  
17 rarely occurred; the Trust has generally been quite cooperative  
18 in producing documents -- but if there are any discovery  
19 disputes, I don't take motions to compel discovery. What I  
20 require is that the parties meet-and-confer in an effort to try  
21 and resolve the dispute, and if you can't resolve it, the party  
22 needing the assistance of the Court arranges for a telephone  
23 hearing with me. I generally do those in the afternoon at say  
24 4 or 5 o'clock in the afternoon. And I generally don't want  
25 any motions. I try to reduce the amount of paper -- you're

1 representing yourself -- but what has to be filed.

2 I'm generally able to resolve those discovery disputes  
3 with just the parties on the telephone without having to --  
4 either side having to generate a lot of paper. Sometimes when  
5 I have that conference, if I believe I need a letter brief,  
6 I'll ask for it and give a short time for that. But the result  
7 has been I rarely have discovery disputes arise, because the  
8 parties are very good at getting them solved before they  
9 actually have to come to me. But you'll see that -- that's  
10 standard language that's in my case management and scheduling  
11 order.

12 Mr. Wishnew, I also encourage you, in talking with Mr.  
13 Moss, with respect to the underlying legal claims -- and you  
14 raised issues about that now -- whether through discussion you  
15 can narrow the claims that Mr. Moss is pursuing so that we can  
16 focus on those that he's -- wants to proceed with. And if not,  
17 I mean, they'll stay in, and at an appropriate time, the Court  
18 will deal with it.

19 Mr. Moss, I've been -- we're working our way down in  
20 the number of remaining contested claims, at this point. There  
21 are still some. So typically, where there are disputed issues  
22 of fact that need to be resolved, I set evidentiary hearings  
23 pretty quickly; and that I won't do over the telephone. So if  
24 you're not able to resolve it by settlement, you'll have to  
25 come to New York for a trial. And generally, I require a joint

1 pre-trial conference order before trial. The template for that  
2 is also on my chambers rules. Mr. Wishnew can forward you what  
3 the standard format looks like. It's premature to get to that  
4 now.

5 But if the matter is going to come to trial, both  
6 sides need to cooperate in preparing the joint pre-trial  
7 conference order that supersedes the pleadings and it lists all  
8 the exhibits that each side intends to offer and various other  
9 things. You can -- as I say, it's on the court's public  
10 website under my chambers rules, so you can see what that  
11 requires.

12 Mr. Wishnew, anything else with respect to Moss?

13 MR. WISHNEW: Not at this time, Your Honor.

14 THE COURT: Mr. Moss, anything you want to raise?

15 MR. MOSS: I don't have any other issues at this time.  
16 Thank you, Your Honor.

17 THE COURT: Okay. All right. So Mr. Wishnew will be  
18 in touch with you or one of his colleagues will be in touch  
19 with you. And get the form -- the proposed case management  
20 order submitted. Obviously share it with Mr. Moss before you  
21 submit it. And you'll have to get a date from Deanna for the  
22 next conference which, again, Mr. Moss will be able to  
23 participate by telephone.

24 I guess it's pretty early in the morning for you in  
25 California, Mr. Moss -- but actually not that early at this

1 point. So --

2 MR. MOSS: Not that early. It's quite fine. Thank  
3 you.

4 THE COURT: Okay. All right. Thank you very much,  
5 Mr. Moss. You can stay on the phone or you're excused;  
6 whichever you wish.

7 MR. MOSS: All right, thank you.

8 THE COURT: Okay, go ahead, Mr. Wishnew.

9 MR. WISHNEW: Thank you, Your Honor. The next matter  
10 on today's agenda, item 4 on page 4, the Borrower Claims  
11 Trust's general status conference.

12 As Your Honor just alluded to, we are working our way  
13 down and coming very close to the end, Your Honor. The  
14 Borrower Claims Trust docketed a status letter yesterday at  
15 docket number 10096. I'm happy to report, without getting too  
16 far ahead of ourselves in the agenda, that the matter scheduled  
17 for trial tomorrow, the Gosselin matter, has been settled. So  
18 that is one --

19 THE COURT: I got that news yesterday afternoon. I'm  
20 glad you were able to reach a settlement.

21 MR. WISHNEW: Yeah, we called you five minutes after  
22 we learned of that, Your Honor. So --

23 With regards to the overall status, Your Honor, at  
24 this point in time, there are twenty-five unresolved claims.  
25 Seven of the claims are the subject of the ninety-fourth

1 omnibus objection that my colleague Ms. Arett will be handling  
2 shortly. One of the claims is scheduled for an evidentiary  
3 hearing during the last week in September, and a second is  
4 scheduled for a status conference --

5 THE COURT: You're talking about the Reed claim?

6 MR. WISHNEW: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. WISHNEW: A second is scheduled for a status  
9 conference. That was the Gosselin matter. With regards to --  
10 there are two pending individual objections scheduled for  
11 initial hearings in October and November. There are three  
12 additional claims pending the completion of settlements and  
13 approximately eleven unresolved claims that will be the subject  
14 of either an omnibus objection, individual objection, or  
15 potentially consensual resolution.

16 Your Honor, considering where we were three years ago,  
17 in December 2013, with 1,420 borrower claims being unresolved,  
18 the fact that we're down to 25 at this point is, I think a  
19 significant achievement. We greatly appreciate Your Honor's  
20 time and commitment to get us to this point. The goal  
21 obviously is to get distributions out as quickly as possible to  
22 holders of allowed borrower claims. And that remains the  
23 Borrowers Trust's commitment. And so we will be moving forward  
24 in that regard.

25 THE COURT: Okay. Thank you.

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1 MR. WISHNEW: Thank you, Your Honor. Your Honor, so  
2 as I -- that brings us to item 5 on today's agenda, the pre-  
3 trial conference for the seventy-fifth omnibus claims  
4 objection.

5 THE COURT: It's not a pre-trial conference. It is  
6 the hearing on the seventy-fifth omnibus objection.

7 MR. WISHNEW: Right. So that -- there was an  
8 evidentiary hearing scheduled for tomorrow. That matter has  
9 now been --

10 THE COURT: Yes.

11 MR. WISHNEW: -- consensually resolved. We provided  
12 counsel, who's actually in the courtroom today -- Mr. Heal -- a  
13 copy of the stipulation for his client to consider.

14 THE COURT: Come on up, Mr. Heal.

15 MR. HEAL: Thank you.

16 MR. WISHNEW: And so subject to final documentation,  
17 we can consider that matter resolved, Your Honor.

18 THE COURT: All right. Mr. Heal, do you want to just  
19 make your appearance?

20 MR. HEAL: Thank you, Your Honor. I thought it was  
21 the right thing to show up. But I didn't --

22 THE COURT: Just make your appearance so I --

23 MR. HEAL: Thank you. Laird Heal for Ms. Gosselin.

24 THE COURT: All right. How are you feeling, Mr. Heal?

25 MR. HEAL: Well, it's enough so that I'm stopping

1 acting -- working as a lawyer for a while. I can do other  
2 things.

3 THE COURT: Well, I'm glad to see you -- you appear  
4 well. Let me put it that way.

5 MR. HEAL: Yes, thank you.

6 THE COURT: I know you've had a lot of difficulties.  
7 So --

8 All right, you can have a seat, if you wish.

9 MR. HEAL: Thank you.

10 THE COURT: All right, so Mr. Heal, I gather that  
11 you've reached an agreement-in-principle on behalf of Ms.  
12 Gosselin to settle the matter?

13 MR. HEAL: Yes, we are, Your Honor. And the status  
14 report said there's still cases to hear. And then she realized  
15 there was time before she'd get her money.

16 THE COURT: Yeah. I take it she's not well. From  
17 your last -- I had gotten the request for her to appear by  
18 telephone at the trial, so --

19 MR. HEAL: Yes. Her kidney is not recovering.

20 THE COURT: Well, please give her my best. I'm sorry  
21 that --

22 MR. HEAL: I will, Your Honor.

23 THE COURT: -- she's not well. Okay.

24 MR. HEAL: Thanks.

25 THE COURT: Okay. I think we're getting close to --



1 you can hear from Mr. Wishnew's report, I think we're getting  
2 closer to the end, and hopefully be able to speed the  
3 distributions to borrowers. Okay?

4 MR. HEAL: Okay. Thank you, Your Honor.

5 THE COURT: Thank you. You can have a seat if you  
6 want, or you can be excused if you want. Okay?

7 Go ahead, Mr. Wishnew.

8 MR. WISHNEW: Thank you, Your Honor. Your Honor, that  
9 brings us to the last page of today's agenda under "Uncontested  
10 matters". I will turn the podium over to my colleague, Ms.  
11 Arett, who will handle the ninety-fourth omnibus objection.

12 THE COURT: Okay. All right.

13 MS. ARETT: Good morning, Your Honor. Jessica Arett  
14 of Morrison & Foerster, on behalf of the ResCap Borrower Claims  
15 Trust.

16 THE COURT: You lost your chance for this trial  
17 tomorrow.

18 MS. ARETT: I know. I was -- I'm not going to say I  
19 wasn't disappointed, but you know. It's not about me.

20 Okay, so the next matter on the agenda is number 6.  
21 It's the Borrower Trust's ninety-fourth omnibus objection to  
22 claims; no-liability borrower claims; redesignate, reclassify,  
23 reduce, and allow borrower claim; reclassify, reduce, and allow  
24 borrower claim; and redesignate and allow borrower claim --  
25 quite a mouthful -- filed at docket number 9974 (sic) on July

1 11th, 2016.

2           Your Honor, through the ninety-fourth omnibus claims  
3 objection, the Borrower Trust sought to expunge or modify and  
4 allow ten proofs of claim. It sought to expunge seven claims  
5 that do not represent valid pre-petition claims against the  
6 debtors, because they do not prove by a preponderance of the  
7 evidence any specific wrongdoing by the debtors. It also  
8 sought to modify by reducing, redesignating, and/or  
9 reclassifying three claims and allowing those claims as  
10 modified.

11           The Borrower Trust thoroughly examined the debtors'  
12 books and records in an effort to validate the accuracy of the  
13 allegations made in the claims at issue and determined that for  
14 those claims which the Borrower Trust seeks to expunge, the  
15 books and records do not show any liability due and owing the  
16 claimants. And then for those claims that the Borrower Trust  
17 seeks to modify and allow, the books and records reflect that  
18 the claims improperly assert either the amount of the claim,  
19 the appropriate debtor against which the claim should be  
20 asserted, and/or the classification of the claim.

21           And responses to the objection were due on August  
22 11th, 2016. The Borrower Trust was contacted by counsel for  
23 two of the claimants to resolve the objection. One claimant, I  
24 believe, Haru Lindsey, voluntarily withdrew her claim and  
25 notice of that was filed at docket number 10076. And then the

1 Borrowers Trust also reached a settlement-in-principle with  
2 claimants Joseph and Maxine Dossett, who had claim number 3741.  
3 And we're currently in the process of finalizing that  
4 settlement agreement.

5 And the Borrower Trust did not receive responses from  
6 any of the other claimants whose claims were identified in the  
7 objection. So as a result, for the reasons stated in the  
8 objection, I'd respectfully request that the Court grant the  
9 ninety-fourth omnibus claims objection as to the eight  
10 uncontested claims, and grant the relief requested in the  
11 objection.

12 THE COURT: All right. Does anybody else wish to be  
13 heard?

14 All right, the Court has reviewed the ninety-fourth  
15 omnibus objection to claims. It's at ECF docket number 9971.  
16 The objection is supported by the declaration of Sara Lathrop,  
17 senior claims analyst for the ResCap Borrower Claims Trust.  
18 The Lathrop declaration is at ECF 9971-7. It's also supported  
19 by the declaration of Norman S. Rosenbaum, which is at ECF  
20 9971-8.

21 As Ms. Arett has indicated, no objections were filed.  
22 Ms. Arett also put on the record that one of the claims has  
23 been withdrawn, notice of which has been filed on ECF. And as  
24 to one other, an agreement-in-principle to settle has been  
25 reached. As to all of the other claims that are subject to the

1 ninety-fourth omnibus objection, and they fell into several  
2 different categories: so-called no-liability borrower claims;  
3 and a group that are redesignate, reclassify, reduce, and allow  
4 borrower claims; third, reclassify, reduce, and allow claims;  
5 and fourth, redesignate and allow borrower claims, each of  
6 those categories is set forth in an exhibit to the omnibus  
7 objection. And the Court concludes that each of the objections  
8 is well-taken and the objections are sustained, and the relief  
9 sought with respect to each of the claims that are set forth in  
10 Exhibits A through D, other than those -- the one that has been  
11 withdrawn and one which has been -- an agreement-in-principle  
12 has been settled, the objection is sustained.

13 MS. ARETT: Thank you, Your Honor.

14 THE COURT: Okay.

15 MS. ARETT: And I think now I'll turn the podium over  
16 to Mr. Nathan Allen (sic).

17 THE COURT: Okay.

18 MR. ALLARD: Good morning, Your Honor. Nathaniel  
19 Allard of Kramer Levin Naftalis & Frankel, for the ResCap  
20 Liquidating Trust. We're now at the last item on the agenda,  
21 on page 7. This is the Liquidating Trust's second omnibus  
22 motion to enforce the plan injunction provisions, which can be  
23 found at ECF number 10047. And we filed on August 15th, 2016.

24 It's supported by the declaration of Kathy Priore, the  
25 Liquidating Trust's associate counsel, which is attached to the

1 motion at Exhibit 2. And Ms. Priore is on the phone if you or  
2 anybody else has any questions.

3 THE COURT: Okay.

4 MR. ALLARD: So this motion was brought pursuant to  
5 the procedures that were previously approved by Your Honor.  
6 And this motion was very similar to the previous enforcement  
7 motion which we filed and was ordered.

8 As we discussed in the motion and the procedures  
9 motion, the purpose of these is to ensure an efficient and  
10 uniform resolution of the -- what started out as hundreds of  
11 pending litigations against the debtors, for which no  
12 corresponding proof of claim was timely filed.

13 We have continued our, essentially, letter-writing  
14 campaign provided for in the procedures that have been largely  
15 very successful. It's a lot of work. We make a good-faith  
16 determination that the party is, in fact, pursuing monetary  
17 claims and that we have appropriate addresses for the notice.  
18 We send multiple letters to the parties.

19 So in this -- I would say this batch that we started  
20 out thinking about for this motion was a group of approximately  
21 eighty parties. And many of them, as a result of our efforts,  
22 have been successfully resolved or withdrawn. We filed the  
23 motion -- as you'll see, there's a spreadsheet attached to the  
24 motion -- against twenty-four parties.

25 There were no objections filed. As we note in the

1 agenda, we received three informal responses, which I will  
2 briefly describe. And we are seeking to -- we'll remove those  
3 parties from the motion. One, Blake F. Sy, which is row number  
4 10 of the exhibit, has actually dismissed voluntarily since the  
5 motion. So we don't need to proceed against that party.

6 One of the parties, Patricia Alton, row number 2, is  
7 willing to dismiss voluntarily, so we're in the process of  
8 effectuating that with them. And then out of an abundance of  
9 caution for one of the parties, the notice was sent to their  
10 attorney contact who we were informed has recently become a  
11 judge, I believe in Cuyahoga County, Ohio. And we received a  
12 telephone call from her clerk informing us that they're  
13 forwarding along the notices and keeping them apprised, but  
14 that party is the George and Kathleen Sari at row number 23.  
15 But just to be safe, we are withdrawing the motion with respect  
16 to them so we can make sure that they're getting proper notice.

17 THE COURT: So you're going forward as to twenty-one?

18 MR. ALLARD: Yes. We are requesting entry of the  
19 order with respect to the twenty-one matters listed on Exhibit  
20 5 to the motion.

21 THE COURT: And just address for me whether the  
22 twenty-one parties received notice of the bankruptcy, the bar  
23 date. I think that -- what were they -- what was the  
24 circumstances as to the twenty-one?

25 MR. ALLARD: Yes. They received multiple notices. At

1 this -- I can't say for certainty that they received notice of  
2 the bar date at the time.

3 THE COURT: Well, part of -- yes, go ahead. I'm  
4 sorry.

5 MR. ALLARD: But they received multiple letters and  
6 notices over time.

7 THE COURT: Did they receive notice before the plan  
8 was confirmed?

9 MR. ALLARD: They received -- they should have.

10 THE COURT: There's a due process issue if they  
11 didn't -- if they didn't receive notice -- sufficient notice --  
12 I won't say what that means necessarily in the context -- but  
13 if they didn't receive -- we have the recent Second Circuit  
14 decision in the General Motors case dealing with due process  
15 issue. And that's why I asked the question whether the twenty-  
16 one parties against whom you're seeking relief today were  
17 provided -- now they didn't file any opposition and they did  
18 receive notice of this hearing. That, I think, you've clearly  
19 established. And I'm not sure I need to go further than that,  
20 but I do -- it's the Second Circuit General Motors decision  
21 that leads me to ask the question.

22 MR. ALLARD: When we have been contacted by parties  
23 and we go back and look, many of them have been served. There  
24 was a very broad notice of the bar date. So I would think that  
25 the vast majority have been. I don't want to say for certain

1 that all of them are.

2 THE COURT: Do you know that any of the twenty-one  
3 were not served?

4 MR. ALLARD: I can't say that I know that.

5 THE COURT: Either notice -- I won't limit it to  
6 notice of the bar date. Notice of the bankruptcy? The  
7 pendency of the bankruptcy?

8 Look, you're relying on a provision -- paragraph 40 of  
9 the confirmation order and Article 9 of the plan, which  
10 includes the discharge language and the discharge injunction.  
11 And my question is, did they know about it? Were they given  
12 notice of it?

13 MR. ALLARD: Right. And I would add that every time a  
14 case was filed, there was a notice of the bankruptcy --

15 THE COURT: Pendency.

16 MR. ALLARD: -- filed in that state court action.

17 THE COURT: So as --

18 MR. ALLARD: So if that was filed before the effective  
19 date, shortly thereafter, there would have been a notice of  
20 that.

21 THE COURT: So all twenty-one as to which you're  
22 seeking relief today, relate to pending state court actions?

23 MR. ALLARD: Yes.

24 THE COURT: Okay. And in each of those twenty-one, a  
25 notice of the pendency of the bankruptcy was filed in the case?



1 Is that what you're telling me?

2 MR. ALLARD: To my knowledge, yes. Yes.

3 THE COURT: Okay. All right. I'm satisfied based on  
4 that.

5 So here it is the case that paragraph 40 of the  
6 confirmation order and also in Article 9 of the plan, there  
7 is -- the following language is in the plan: that failing to  
8 file a proof of claim by the applicable bar date "shall be  
9 deemed disallowed" -- referring to a claim -- "disallowed,  
10 discharged, released, and expunged as of the effective date,  
11 without any further notice to or action, order, or approval of  
12 the bankruptcy court. And holders of such claims may not  
13 receive any distributions on account of such claims unless such  
14 late proof of claim is deemed timely filed by a final order of  
15 the bankruptcy court." That's in Article 8(b), that language  
16 that I just read.

17 As indicated, the Court had previously granted similar  
18 relief to what's being asked for today. So with respect to the  
19 twenty-one parties against whom you're seeking relief today,  
20 the motion is granted.

21 MR. ALLARD: Thank you.. We will submit a revised  
22 order.

23 THE COURT: Okay. All right, thank you very much.

24 Mr. Wishnew, anything else for today?

25 MR. WISHNEW: That's it, Your Honor. That's --

RESIDENTIAL CAPITAL, LLC, ET AL.

26

1 THE COURT: Okay, we have a noon telephone --

2 MR. WISHNEW: Yes, Ms. Hager from the Reed Smith firm  
3 will be handling that for the Borrower Claims Trust.

4 THE COURT: Okay. Thanks very much, Your Honor.

5 MR. WISHNEW: Thank you, Your Honor.

6 THE COURT: All right, we're adjourned.

7 (Whereupon these proceedings were concluded at 10:45 AM)

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I N D E X

RULINGS

	PAGE	LINE
Re Alan Moss matter, scheduling order to be	8	19
entered as outlined by the Court on the		
record.		
Ninety-fourth omnibus objection to claims is	20	7
sustained as to remaining claims.		
Trust's second omnibus motion to enforce	25	20
injunctive provisions of plan and		
confirmation order is granted.		

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

*Penina Wolicki*

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PENINA WOLICKI

AAERT Certified Electronic Transcriber CET\*\*D-569

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Date: September 15, 2016